

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: PETER RHINES, Complainant, v. MIDAMERICAN ENERGY COMPANY, Respondent.	DOCKET NO. FCU-2014-0008
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**ORDER GRANTING REQUEST FOR FORMAL PROCEEDING,
SCHEDULING HEARING, AND
ESTABLISHING DATE FOR FILING ADDITIONAL INFORMATION**

(Issued May 12, 2014)

PROCEDURAL BACKGROUND

On August 19, 2013, Peter Rhines filed an informal complaint with the Iowa Utilities Board (Board) alleging that MidAmerican Energy Company (MidAmerican) improperly back billed Rhines for natural gas usage that resulted from diversion of gas at the Rhines home. In the informal complaint, Rhines stated that he had been falsely accused of diverting natural gas for years from the gas meter at his home located at 290 49th Street, in Des Moines, Iowa; however, Rhines admitted that he had diverted gas at the gas meter beginning on March 22, 2013. The diversion was discovered on March 31, 2013, by MidAmerican. Rhines stated that he was sorry for the decision to divert natural gas at his home and had paid MidAmerican the diversion charge of \$155.00 plus an additional \$1,000 as restitution.

Rhines stated that he paid the \$1,000 in restitution in an attempt to settle this matter with MidAmerican. Rhines stated that MidAmerican did not accept this settlement and MidAmerican has charged him an estimated amount for diversion dating back to 2007. Rhines objected to being charged for gas usage back to 2007 and stated that he lives an extremely energy conservative lifestyle and has been doing so for decades. Rhines pointed out that MidAmerican found no evidence he had tampered with the electric meter in his home or at other properties he owns that receive service from MidAmerican.

Rhines provided documentation and photographs to support his position that he has lived an extremely energy conservation lifestyle for decades. He provided documentation of his low energy usage at his home and at other properties he owns. In addition, Rhines provided photographs showing the limited space he occupied at his home and showing the remaining space is used for storage.

MIDAMERICAN RESPONSE TO INFORMAL COMPLAINT

On September 11, 2013, MidAmerican filed a response to the informal complaint. According to the information provided by MidAmerican, on March 31, 2013, MidAmerican received a call reporting a minor gas odor from one of Rhines' neighbors. MidAmerican records indicate that MidAmerican personnel responded and found that the natural gas odor originated from the Rhines home where a diversion hose had been installed on the regulator in front of the gas meter. According to the records provided by MidAmerican, the diversion hose was painted gray to match MidAmerican's piping and was bent with a spring to follow the shape of

the inlet pipe. The diversion hose was routed into the basement and shovels were placed around the meter and diversion hose. After discovering the diversion, MidAmerican personnel removed the gas meter and installed a lock on the main valve.

In its response, MidAmerican stated that the diversion of the natural gas service coupled with the abnormally low usage for electric service at the property led MidAmerican to request access to the inside electric meter to investigate the potential for tampering with the electric meter. According to MidAmerican's records, Rhines granted access to his electric meter on April 12, 2013. There was no evidence of an electric diversion inside the home.

In order to calculate the amount to be charged Rhines for natural gas usage for the diversion, MidAmerican reviewed usage history at the Rhines home from 1999 to 2013. MidAmerican's gas usage history for the Rhines home shows a normal or average usage pattern from April 1999 to March 2006. During the periods of April 2006 to March 2007, and April 2007 to March 2008, the gas usage dropped to half of the normal pattern for this property. From April 2008 to March 2009, the gas usage returned to a normal usage pattern.

MidAmerican assumed that the return to the normal usage pattern from April 2008 to March 2009, was due to MidAmerican's attempts to gain access to the property to install an automated meter reading (AMR) electric meter. The AMR electric meter was installed on August 14, 2009. An AMR device was installed on the gas meter on December 23, 2008. MidAmerican records show gas usage declined steadily beginning in April 2009 and continuing to March 2013. Based upon

the low gas usage and photos that show the paint on the diversion hose had begun chipping off, MidAmerican decided that the diversion had occurred since 2006 and calculated the amount owed by Rhines based upon that determination.

In order to calculate the back-billed gas charges, MidAmerican found two comparable properties with similar square footage that were built about the same year as the Rhines home. The two comparable properties' annual gas usage from April 2012 to March 2013 averaged 1,245 therms per year. MidAmerican then billed the difference between the usage that was recorded on Mr. Rhines' meter and the average of 1,245 therms for the years that it appeared gas service was diverted, for a total back bill of \$4,414.99. MidAmerican did not backbill Mr. Rhines for service from April 2008 to March 2009, when the usage level had returned to normal.

On April 23, 2013, MidAmerican's revenue protection investigation was closed and the monthly bill was issued for \$4,579.60; this bill was comprised of \$17.15 in electric service charges, \$32.46 in natural gas service charges, a \$115.00 gas revenue protection charge, and \$4,414.99 in diverted gas service charges, due by May 17, 2013.

On December 11, 2013, MidAmerican provided additional information in response to questions from Board Consumer Services staff (Staff). As part of its response, MidAmerican states that on December 3, 2013, Rhines owed \$3,438.12 from the diverted gas charges and \$209.82 in late payment charges on the past due amount. Late payment charges were stopped when the informal complaint was filed.

PROPOSED RESOLUTION BY BOARD STAFF

On December 18, 2013, Staff issued a proposed resolution. In the Proposed Resolution, Staff concluded based upon the information regarding Rhines' lifestyle during the period of the diversion that use of the comparable gas usage from similar homes was not appropriate. Staff concluded that Rhines' average usage would not be the same as the similar homes and Staff proposed a resolution that recalculated the diversion amount at 50 percent of the average usage of the comparable homes. Staff accepted MidAmerican's determination of the time period to be used in calculating the amount to be charged Rhines.

Applying the 50 percent standard and MidAmerican's calculation, Staff found that instead of 1245.5 therms for unmetered usage, the appropriate amount of unmetered usage would be 623. Based on MidAmerican's calculation of the time period and price of gas, Staff calculated that Rhines should pay \$1,310.19 for gas diversion for 2008, 2010, 2011, and 2012. Staff then added late payment charges of \$226.68 for a total owed by Rhines of \$1,536.87.

REQUEST FOR FORMAL PROCEEDING

On December 26, 2013, MidAmerican filed a request for reconsideration of the Proposed Resolution and, if reconsideration is not granted, for a formal proceeding. In support of the request for a formal proceeding, MidAmerican states that the diversion method used by Rhines created a safety risk and posed a threat of explosion which could have led to a loss of life. In addition, MidAmerican points out that prior to April 2006, recorded consumption at the Rhines home was similar to the

consumption at the comparable homes and this evidence contradicts Rhines' claim of decades of conservative usage.

MidAmerican states that Rhines decided to steal natural gas from MidAmerican and he caused the situation where MidAmerican was no longer able to bill him for actual usage. MidAmerican does not believe that Rhines' claimed lifestyle should be a factor in calculating the amount to be backbilled. MidAmerican states that it backbilled Rhines based upon standard billing practices that are used to calculate backbills in all diversion cases. Finally, MidAmerican states that the diversion was a criminal act and MidAmerican has the right to press charges based upon Rhines' written admission.

Iowa Code § 476.3 provides that either the complainant or utility may request a formal complaint proceeding and the Board shall grant the request if the Board determines there is any reasonable ground for investigating the complaint. If the Board grants the request for a formal proceeding, the statute requires the Board to set the matter for hearing and give notice as the Board deems appropriate. Rule 199 IAC 6.7(476) provides that the written complaint and all information obtained in the informal complaint proceeding shall be made part of the record in the formal proceeding.

Based upon the serious nature of the diversion of natural gas service and the issue of how to estimate the amount of natural gas usage for purposes of calculating the amount to be backbilled due to the diversion, the Board will grant the request for a formal proceeding. The Board does not consider reconsideration appropriate since only a Board decision will provide a formal resolution of the issues raised by the

complaint. The Board understands Staff's resolution of the backbilled amount based upon the information showing Rhines' limited use of his home and also understands MidAmerican's concern that a person who diverts natural gas service should not be allowed to avoid the reasonable charges for the natural gas diverted. Consideration of the issues raised by the informal complaint, MidAmerican's response, and the Proposed Resolution should not only resolve the issues in this complaint but also provide some guidance for future instances of diversion.

The Board will establish a date for both MidAmerican and Rhines to provide any additional information either party considers relevant to the Board's resolution of the issues. As required by Iowa Code § 476.3, the Board will set this matter for hearing. Since all of the information provided by the parties in the informal complaint is made part of the record in this formal proceeding, the Board does not consider it necessary to require prefiled testimony. Parties should have witnesses available at the hearing to respond to Board questions. Parties may also request the opportunity to provide direct testimony, subject to cross examination, at the hearing.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for a formal complaint proceeding filed by MidAmerican Energy Company on December 26, 2013, is granted.
2. Additional information regarding this complaint may be filed on or before June 2, 2014.

3. A hearing shall be held beginning at 9 a.m. on June 11, 2014, for the purpose of responding to questions by the Utilities Board. The hearing shall be held in the Board's Hearing Room, 1375 E. Court Avenue, Des Moines, Iowa. The parties shall appear thirty minutes before the start of the hearing to address procedural issues and to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515) 725-7331 five days in advance of the scheduled date to request that appropriate arrangements be made.

4. A request to present a witness for direct testimony and cross examination at the hearing shall be filed on or before June 2, 2014.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 12th day of May 2014.